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Supreme Court of the United States

OCTOBER TERM, 1935

A. G. TRIPLETT, R. M. TRIPLETT, A. NELSON, C. M. TRIPLETT, JR., AND THE BALTIMORE GASLIGHT COMPANY,
Petitioners,
vs.
PERCIVAL D. LOWELL, FRANCIS W. DUNMORE, and DUBILIER CONDENSER CORPORATION,
Respondents.

No. 388

BRIEF FOR RESPONDENTS IN OPPOSITION TO RENEWAL OF PETITION FOR WRIT OF CERTIORARI

CLIFTON V. EDWARDS,
GAYLORD LEE CLARK,
JOHN B. BRADY,
Of Counsel for Respondent

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In the case of *Mantle Lamp Co. of America* vs. *Aluminum Products Company* (No. 590, October Term, 1935), referred to in petitioners' petition, the Circuit Court of Appeals for the Seventh Circuit in 1927 held certain claims invalid and no application was made for writ of certiorari. Thus plaintiff had proceeded as far as it could in the Seventh Circuit, the highest court in that circuit having given its pronouncement.

After five or six years plaintiff sought to have the same court review its finding in another suit against a different defendant, urging that activity in the Sixth Circuit mean-

while justified such action. Apparently no question was raised as to the propriety of the litigation in the Sixth Circuit, and the Circuit Court of Appeals for the Seventh Circuit (petition, p. 3, par. [2]) did not rule upon whether or not the delay, even of five or six years, was unreasonable. The question presented therefore is as to what attitude the Circuit Court of Appeals for the Seventh Circuit should take in its own circuit, i. e., "in the same judicial circuit as that in which the first cause was decided" (Petition, p. 2), in view of its own earlier decision.

In the case at bar, the question involved was one of fact, i.e., whether there was unreasonable delay under the circumstances of the case, and both the District Court and the Circuit Court of Appeals held that in fact there was no unreasonable delay.

It is therefore believed that regardless of the decision arrived at by this Court in answer to the questions certified by the Seventh Circuit, such answers would not be determinative of the correctness of the decision of this Court denying petitioners' petition for writ of certiorari.

The order of the Circuit Court of Appeals for the Fourth Circuit entered November 20, 1935 (Vol. I, pp. 433, 436) made no change in its decree of June 4, 1935, except to divide the costs equally between the parties instead of assessing the costs against appellants and cross-appellees.

Respectfully submitted,

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JOHN B. BRADY,
Of Counsel for Respondent.

December 2, 1935.